



PLANNING
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TEX HAEUSER, AICP
Planning Director

DEC 30 1997
FCC MAIL ROOM

December 19, 1997

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182m/and DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the preceding cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

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For similar reasons the FCC cannot "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a municipality's true reasons any more than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

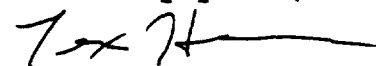
Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high--they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

And setting artificial time limits for municipalities to act on environmental, zoning and building permit approvals for such towers serves no useful purpose. It is a violation of the U. S. Constitution, the Communications Act and Federalism for you to put time limits on municipalities to act on all local approvals and then state that all such applications will be automatically deemed granted if we don't act within this time frame, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. And the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Sincerely yours,



Tex Haeuser
Planning Director

cc: Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington DC 200554

cc: Commissioner Designate Harold Furchtgott-Roth
Federal Communications Commission

Commissioner Designate Michael Powell
Federal Communications Commission

Commissioner Designate Gloria Tristani
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MM 97-182

October 13, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

ATTN: Docket No. FCC 97-296

Gentlemen:

I am writing to you to oppose the Notice of Proposed Rulemaking (NPRM) currently open for comments by the Federal Communications Commission (FCC). Under no circumstances should the FCC preempt state or local zoning laws or land use ordinances to speed up the implementation of Digital Television (DTV) service. The mandate, which allows the FCC to essentially expand its own power to overrule the state, county, and city zoning ordinances, should not be used when approval is necessary for the construction of a broadcast tower.

Due to the following reasons, I am opposed to the NPRM:

- Preemption of the zoning laws at both the state and local level will result in new hazards to aerial operations, aircraft, and passengers in the United States.
- The implementation of the Digital Television (DTV) mandate by congress should not give the FCC free reign over state and local issues which are being handled with due process. The time frame created by congress did not take into consideration all aspects of DTV establishment. The safety of citizens, aircraft passengers, and pilots should not be sacrificed just to meet a time frame mandated by a congress who did not completely understand the magnitude of the DTV construction process or procurement.
- The FCC proposal conflicts directly with the Federal Aviation Administration's (FAA's) mandate to protect the airspace from unsafe obstructions penetrating navigable airspace. This conflict should have been resolved PRIOR to the proposal being opened for comment.
- The FAA is unable to protect ALL airports from obstruction development. The FAA mandate only allows for analysis of effect on public use airports. The FAA has an ongoing program, including published suggestions about how local governments should create zoning laws that protect local airports from obstructions. (See FAA Advisory Circular 150/5190-4A.)
- The FAA regulations pertaining to obstructions cannot be used to enforce the outcome of an aeronautical study. 14 CFR Part 77 only requires that the sponsor of the proposed construction notify the FAA, not follow the FAA's regulations. This proverbial "hole" in the regulations leaves the FAA at a major disadvantage when trying to protect navigable airspace.

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Federal Communications Commission

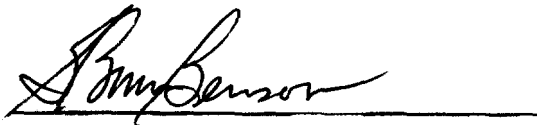
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The FAA relies on the FCC to follow FAA recommendations, however the proposal to override state and local zoning shows extreme motive to allow these tall towers to be erected.

- The NPRM proposes preemption of zoning laws for more than just DTV towers, it also proposes to override determinations by local government when FM antennas are proposed as well. The FCC is taking too much power into their own hands!
- This implementation is not for the people and by the people, but rather, for the broadcasters and by the broadcasters. *The benefit of this NPRM is to fill the pockets of the networks and nothing more!*

Signed,



Concerned Citizen of the United States

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